

## Document Log

From		To	
"Yurdin, Bruce" <Bruce.Yurdin@Illinois.gov>		"Sofat, Sanjay" <Sanjay.Sofat@Illinois.gov> Kevin Pierard/R5/USEPA/US@EPA Stephen Jann/R5/USEPA/US@EPA	
CC		BCC	
"Willhite, Marcia" <Marcia.Willhite@Illinois.gov>			
Subject		Date/Time	
RE: Permit requirements for CAFOs		10/25/2010 08:42 AM	

## Document Body

Tuesday afternoon works for me.  
bjy

-----Original Message-----

From: Sofat, Sanjay  
Sent: Friday, October 22, 2010 2:01 PM  
To: Pierard.Kevin@epamail.epa.gov; Jann.Stephen@epamail.epa.gov  
Cc: Yurdin, Bruce; Willhite, Marcia  
Subject: RE: Permit requirements for CAFOs

I can do Tuesday or Wednesday afternoon.

Bruce?

Sanjay K. Sofat  
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Division of Water Pollution Control  
Bureau of Water  
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e-mail: sanjay.sofat@illinois.gov

-----Original Message-----

From: Pierard.Kevin@epamail.epa.gov [mailto:Pierard.Kevin@epamail.epa.gov]  
Sent: Thursday, October 21, 2010 4:38 PM  
To: Sofat, Sanjay; Jann.Stephen@epamail.epa.gov  
Cc: Yurdin, Bruce; Willhite, Marcia; Henry.Timothy@epamail.epa.gov;  
Hyde.Tinka@epamail.epa.gov  
Subject: Re: Permit requirements for CAFOs

Let's schedule a call on this. I have tomorrow afternoon, Monday before 10, or Tuesday or Wednesday afternoon

----- Original Message -----

From: "Sofat, Sanjay" [Sanjay.Sofat@Illinois.gov]  
Sent: 10/21/2010 04:32 PM EST  
To: Stephen Jann  
Cc: "Yurdin, Bruce" <Bruce.Yurdin@Illinois.gov>; Kevin Pierard; "Willhite, Marcia" <Marcia.Willhite@Illinois.gov>; Timothy Henry; Tinka Hyde  
Subject: RE: Permit requirements for CAFOs

I'm trying to understand the meaning of this phrase- "the federal language may contain ambiguity." Are you referring to the criterion stated in the federal rule- " discharge to waters of the U.S. or are designed, constructed, operated, or maintained such that a discharge to waters of the U.S. will occur?" Or

Are you stating that since the 2008 rule doesn't cover certain discharges/receiving waters such as discharges to ground water, isolated waters, the CWA is ambiguous for those types of discharges/receiving waters?

If we need to discuss this over the phone, please let me know.

Sanjay K. Sofat  
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-----Original Message-----

From: Jann.Stephen@epamail.epa.gov [mailto:Jann.Stephen@epamail.epa.gov]  
Sent: Thursday, October 21, 2010 3:01 PM  
To: Sofat, Sanjay  
Cc: Yurdin, Bruce; Pierard.Kevin@epamail.epa.gov; Willhite, Marcia; Henry.Timothy@epamail.epa.gov; Hyde.Tinka@epamail.epa.gov  
Subject: RE: Permit requirements for CAFOs

Your assumption is correct.

I don't understand the totality of the laws in other States. However, I know that Michigan overcame a State court challenge to its rule requiring an NPDES permits for CAFOs that have the potential to discharge. I further understand that Ohio can require NPDES permits only to the extent that an NPDES permit is required under the Clean Water Act. Ohio has State construction and operating permits for Large CAFOs.

The 2008 federal rule requires permits for CAFOs that discharge to waters of the U.S. or are designed, constructed, operated, or maintained such that a discharge to waters of the U.S. will occur. The rule and the CWA recognize an exclusion for discharges that qualify as "agricultural storm water." MI and WI define agricultural storm water such that it does not function as an exclusion from the permit requirement. The CWA does not regulate discharges to isolated waters or ground water (unless the ground water is directly connected to surface water). Wisconsin includes discharges to ground water within the scope of their NPDES program.

To the extent that the federal language may contain ambiguity, our recommendation was that Illinois EPA clear-up the ambiguity to the extent possible. Beyond that, Tinka recently recommended that Illinois EPA consider a registration requirement for unpermitted Large CAFOs or a requirement that unpermitted Large CAFOs certify that they do not discharge and are not designed, constructed, operated, or maintained such that a discharge will occur. Indiana adopted a similar certification requirement early in the last decade. They did so with very good success in terms of the number of Large CAFOs that came forward with permit applications.

Steve.

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From: "Sofat, Sanjay" <Sanjay.Sofat@Illinois.gov>  
To: Stephen Jann/R5/USEPA/US@EPA, "Willhite, Marcia" <Marcia.Willhite@Illinois.gov>  
Cc: "Yurdin, Bruce" <Bruce.Yurdin@Illinois.gov>, Tinka Hyde/R5/USEPA/US@EPA, Timothy Henry/R5/USEPA/US@EPA, Kevin Pierard/R5/USEPA/US@EPA  
Date: 10/14/2010 04:51 PM  
Subject: RE: Permit requirements for CAFOs

Steve,

Thanks for sharing the information about other states.

I'm making the assumption that we are discussing this specific statement- Illinois, like other states, can require ALL Large CAFOs to apply for an NPDES permit. By ALL large CAFOs I mean the large CAFOs that must seek an NPDES permit under the 2008 federal rule as well as those large CAFOs that the rule allows to be unpermitted if certain conditions are met. If this assumption is misguided then I withdraw my analysis.

Section 11 of the Illinois Environmental Protection Act states- "it would be inappropriate and misleading for the State of Illinois to issue permits to contaminant sources subject to such federal law, as well as State law, which do not contain such terms and conditions as are required by federal law, or the issuance of which is contrary to federal

law."

I wonder if other states have a similar language in their state Environmental Protection Acts.

Since the 2008 federal rule specifically states when an NPDES permit is required, the language in Section 11 will required IEPA to follow the 2008 federal rule requirement in terms of who and when an NPDES permit is required.

If you see it differently please share. Thanks,

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-----Original Message-----

From: Jann.Stephen@epamail.epa.gov [mailto:Jann.Stephen@epamail.epa.gov]

Sent: Wednesday, October 13, 2010 12:45 PM

To: Willhite, Marcia

Cc: Sofat, Sanjay; Yurdin, Bruce; Hyde.Tinka@epamail.epa.gov;

Henry.Timothy@epamail.epa.gov; Pierard.Kevin@epamail.epa.gov

Subject: Permit requirements for CAFOs

Hi Marcia. I am following up on our recent conversation about the CAFO "duty to apply" for a permit as established by Minnesota, Wisconsin, Indiana, and Michigan. The applicable statutory or rule text from those States is provided in the attachment below. The requirements apply to the State programs for issuing NPDES permits. Please let me know if you have any questions our would like to discuss. Steve.

(See attached file: State Duty to Apply.docx)

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